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ALEXANDER C. SCHOCH, GENERAL COUNSEL

RAILROAD COMMISSION OF TEXAS

OFFICE OF GENERAL COUNSEL

MEMORANDUM

TO: Chairman Wayne Christian
Commissioner Christi Craddick
Commissioner Ryan Sitton

FROM: Haley Cochran, Attorney *HAC*
Office of General Counsel

THROUGH: Alexander C. Schoch, General Counsel *acs/km*

DATE: July 30, 2019

SUBJECT: Proposed amendments to 16 Tex. Admin. Code
§12.108, relating to Permit Fees

August 6, 2019		
Approved	Denied	Abstain
<i>CC</i> <i>RS</i>	<i>30:01</i>	

Attached is Staff's recommendation to publish proposed amendments to 16 Tex. Admin. Code §12.108, relating to Permit Fees. These amendments are necessary to implement provisions of House Bill 1 (86th Legislature, Regular Session, 2019) and, specifically, Article VI, Railroad Commission Rider 5, which requires the amounts appropriated from general revenue for state fiscal years 2020 and 2021 to cover the cost of permitting and inspecting coal mining facilities. As a result, staff proposes to adjust annual fees for FY 2020/2021 such that the current annual bonded acreage fee of \$12.85 would be increased to \$14.50 per bonded acre, and the current annual permit fee of \$6,170 would be increased to \$6,930 per permit.

Staff requests the Commission's approval to publish the proposed amendments in the Texas Register for a 30-day comment period. If approved at conference on August 6th, the proposal should appear in the August 23rd issue of the Texas Register. This proposal and an online comment form would also be made available on the Commission's website the day after conference, giving interested persons more than two additional weeks to review and submit comments to the Commission.

cc: Wei Wang, Executive Director
Alex Schoch, Interim Director – Surface Mining and Reclamation Division
Corey Crawford, Chief Financial Officer

1 The Railroad Commission of Texas (Commission) proposes to amend §12.108, relating to Permit
2 Fees, to implement provisions of House Bill 1, 86th Texas Legislature (Regular Session, 2019), and,
3 specifically, Article VI, Railroad Commission Rider 5, which requires the amounts appropriated from
4 general revenue for state fiscal years 2020 and 2021 to cover the cost of permitting and inspecting coal
5 mining operations. This requirement is contingent upon the Commission assessing fees sufficient to
6 generate, during the 2020-2021 biennium, revenue to cover the general revenue appropriations.

7 The Commission proposes to amend the fees set forth in subsection (b) by amending the calendar
8 years to 2019 and 2020. The Commission proposes to amend paragraph (1) to increase the annual fee for
9 each acre of land within a permit area covered by a reclamation bond on December 31st of each year, as
10 shown on the map required at §12.142(2)(C) of this chapter (relating to Operation Plan: Maps and Plans),
11 from the current \$12.85 to \$14.50. The Commission proposes to amend paragraph (2) to increase the
12 annual fee for each permit in effect on December 31st of each year to \$6,930 from the current amount of
13 \$6,170. The Commission anticipates that annual fees in these new amounts will result in revenue of
14 \$2,589,180 for the coal regulatory program in each year of the 2020-2021 biennium.

15 Alexander C. Schoch, Interim Director, Surface Mining and Reclamation Division, has
16 determined that during each year of the first five years the proposed amendments would be in effect, the
17 net effect on state government as a result of enforcing the proposed amendments would be zero. There are
18 no fiscal impacts on local governments.

19 The Texas State Legislature appropriated funds based on fees collection as set forth in Rider 5,
20 and also includes fees appropriated for a separate, existing regulatory program for uranium exploration
21 permitting. This uranium program cost is estimated at \$45,000 per annum, which is subtracted from the
22 total annual appropriation to determine the coal regulatory program fee needs. The Commission's coal
23 mining regulatory program is partially funded with a 50 percent cost reimbursement grant from the
24 United States Department of the Interior, Office of Surface Mining Reclamation and Enforcement. After
25 accounting for the uranium program costs, which are also fee-based but are not being revised in this
26 rulemaking, Mr. Schoch has determined that the appropriated state share of the cost for implementing the

1 coal regulatory program of \$2,570,263 in FY 2020 and \$2,572,709 in FY 2021 are the costs that must be
2 funded through fees paid by the regulated coal mining industry.

3 Fees for the Commission's surface coal mining regulatory program come from two general
4 categories: application fees and annual fees. The application fees are specified in §12.108(a) and the
5 Commission does not propose to revise these fees in this rulemaking. Annual fee collection is based on
6 the bonded acreage for each permit as of December 31 of each year. The Commission may adjust the
7 annual fees in future rulemakings if additional funding is needed due to changes in federal funding,
8 legislative appropriations, the number of permits, the amount of funds received from application fees, the
9 bonded acreage, or other relevant factors.

10 The total amount of annual fees required to fund both the coal and uranium regulatory program
11 was determined by subtracting the total amount of application fees estimated to be collected in each fiscal
12 year for the two regulatory programs (coal and uranium) from the average annual state share cost for both
13 FY 2020 and FY 2021 (\$2,676,486). Mr. Schoch estimates that the Commission will collect coal
14 program application fees annually in the amount of \$60,000 and uranium exploration program fees in the
15 amount of \$45,000 in both FY 2020 and FY 2021. The remainder in state share expense (\$2,571,486) is
16 then allocated for collection from annual coal fees. In accordance with an agreement with industry
17 established in 2005, the total remaining amount of annual fees required is allocated at seven percent for
18 annual per-permit fees and 93 percent from bonded acreage fees. The proposed annual fee rates are then
19 determined based on the anticipated permit status and bonded acres on December 31, 2019.

20 The 93 percent to be collected through the bonded acreage fee (\$2,391,486) was divided by
21 165,000 acres, the cumulative acres the Commission estimates will be under bond on December 31, 2019,
22 to derive the \$14.50 per bonded acre fee proposed in subsection (b)(1). The remaining seven percent to be
23 collected from annual permit fees (\$180,000) was divided by 26, the estimated number of permits on
24 December 31, 2019, to derive the \$6,930 individual permit annual fee proposed in subsection (b)(2).

25 Mr. Schoch has determined that during each year of the first five years the proposed amendments
26 would be in effect there will be an increase in the economic cost to the mining industry of approximately

1 \$292,010, an approximate 13.8% increase. This is based on: (1) a comparison of the revenue that would
2 be generated under the current annual fee of \$12.85 per bonded acre to the revenue that would be
3 generated under the proposed increase to \$14.50 per bonded acre; and (2) a comparison of the revenue
4 generated under the current annual fee of \$6,170 per permit to the revenue that would be generated under
5 the proposed increased amount of \$6,930 for each of the anticipated remaining 26 permits.

6 Mr. Schoch has determined that the public benefit resulting from the new fee structure for coal
7 mining activities is the alignment of fees paid by the coal mining industry with the costs incurred by the
8 Commission, as established in House Bill 1.

9 In accordance with Texas Government Code §2006.002, the Commission has determined that
10 there will be no adverse economic effects on rural communities or small or micro-businesses resulting
11 from the proposed amendments because there are no rural communities, small businesses or micro-
12 businesses, as those terms are defined in Texas Government Code §2006.001, holding coal mining
13 permits from the Commission. Therefore, the Commission has not prepared the economic impact
14 statement or regulatory flexibility analysis required under §2006.002(c).

15 The proposed amendments also will not affect a local economy; therefore, the Commission has
16 not prepared a local employment impact statement pursuant to Texas Government Code §2001.022.

17 During the first five years that the rules would be in effect, the proposed amendments would not:
18 create or eliminate a government program; create or eliminate any employee positions; require an increase
19 or decrease in future legislative appropriations; create a new regulation; expand, limit, or repeal an
20 existing regulation; increase or decrease the number of individuals subject to the rule's applicability; or
21 effect the state's economy. As described above, the proposed amendments would increase the amount of
22 fees paid to the agency so that the fees paid by the coal mining industry align with the costs incurred by
23 the Commission, as established in House Bill 1.

24 Lastly, the Commission has determined that the proposed rule does not meet the statutory
25 definition of a major environmental rule as set forth in Texas Government Code §2001.0225; therefore, a
26 regulatory analysis pursuant to that section is not required.

1 Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel,
2 Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at
3 www.rrc.texas.gov/general-counsel/rules/comment-form-for-proposed-rulemakings; or by electronic mail
4 to rulescoordinator@rrc.texas.gov. The Commission will accept comments until 12:00 p.m. (noon) on
5 Monday, September 23, 2019, which is 31 days after publication in the *Texas Register*. The Commission
6 finds that this comment period is reasonable because the proposal and an online comment form will be
7 available on the Commission's web site more than two weeks prior to Texas Register publication of the
8 proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The
9 Commission encourages all interested persons to submit comments no later than the deadline. The
10 Commission cannot guarantee that comments submitted after the deadline will be considered. For further
11 information, call Mr. Schoch at (512) 463-6901. The status of pending Commission rulemakings is
12 available at www.rrc.texas.gov/general-counsel/rules/proposed-rules.

13 The Commission proposes the amendment under Texas Natural Resources Code, §134.013,
14 which authorizes the Commission to promulgate rules pertaining to surface coal mining operations and
15 §134.055, which authorizes the Commission to collect annual fees.

16 Statutory authority: Texas Natural Resources Code, §134.013 and §134.055.

17 Cross-reference to statute: Texas Natural Resources Code, §134.013 and §134.055.

18 §12.108. Permit Fees.

19 (a) Application Fees. Each application for a surface coal mining and reclamation permit or
20 renewal or revision of a permit shall be accompanied by a fee. The initial application fee and the
21 application fee for renewal of a permit may be paid in equal annual installments during the term of the
22 permit. The fee schedule is as follows:

23 (1) application for a permit: \$5,000.

24 (2) application for revision of a permit: \$500.

25 (3) application for renewal of a permit: \$3,000.

1 (b) Annual Fees. In addition to application fees required by this section, each permittee shall pay
2 to the Commission the following annual fees for calendar years 2019 [~~2017~~] and 2020 [~~2018~~] due and
3 payable not later than March 15th of the year following the calendar year for which these fees are
4 applicable:

5 (1) a fee of \$14.50 [~~\$12.85~~] for each acre of land within a permit area covered by a
6 reclamation bond on December 31st of the year, as shown on the map required by §12.142(2)(C) of this
7 chapter (relating to Operation Plan: Maps and Plans); and

8 (2) a fee of \$6,930 [~~\$6,170~~] for each permit in effect on December 31st of the year.

9 (c) Fees paid to the Commission under this section shall be deposited in the state treasury and
10 credited to the general revenue fund.

11 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be
12 within the agency's authority to adopt.

13 Issued in Austin, Texas on August 6, 2019.

14 Filed with the Office of the Secretary of State on August 6, 2019.

Haley Cochran / km
Haley Cochran
Rules Attorney, Office of General Counsel
Railroad Commission of Texas